



**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A-357-820]**

**Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that imports of biodiesel from Argentina are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2016, through December 31, 2016. The final weighted-average dumping margins are listed below in the section entitled “Final Determination Margins.”

**DATES:** Applicable March 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** David Lindgren, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3870.

**SUPPLEMENTARY INFORMATION:**

Background

On October 31, 2017, Commerce published in the *Federal Register* the preliminary affirmative determination of sales at LTFV and the preliminary affirmative determination of critical circumstances, in part, in the antidumping duty (AD) investigation of biodiesel from

Argentina.<sup>1</sup> On December 8, 2017, Commerce published a postponement notice, extending the due date of the final LTFV determination until February 15, 2018.<sup>2</sup> Commerce invited comments from interested parties on the *Preliminary Determination*.<sup>3</sup> The petitioner, LDC Argentina S.A. (LDC), and the Vicentin Group filed case and rebuttal briefs.<sup>4</sup> Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the final determination of this investigation is now February 20, 2018.<sup>5</sup> A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by interested parties for this final determination, may be found in the Issues and Decision Memorandum.<sup>6</sup> The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and it is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision

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<sup>1</sup> See *Biodiesel from Argentina: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 50391 (October 31, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See *Biodiesel from Argentina and Indonesia: Postponement of Final Determinations of Sales in Less Than Fair Value Investigations and Extension of Provisional Measures*, 82 FR 57952 (December 8, 2017).

<sup>3</sup> See Memorandum, "Case Brief Schedule for the Antidumping Duty Investigation of Biodiesel from Argentina," dated December 1, 2017.

<sup>4</sup> The petitioner is the National Biodiesel Board Fair Trade Coalition, which is an *ad hoc* association comprised of domestic producers of biodiesel, as well as one trade association. See, e.g., *Biodiesel from Argentina and Indonesia: Antidumping and Countervailing Duty Petitions*, dated March 23, 2017. The Vicentin Group consists of the following companies: Vicentin S.A.I.C., Renova S.A., Oleaginosa Moreno Hermanos S.A., Molinos Agro S.A., Patagonia Energia S.A., VFG Inversiones y Actividades Especiales S.A., Vicentin S.A.I.C. Sucursal Uy, Trading Company X, and Molinos Overseas Commodities S.A. See, e.g., Preliminary Decision Memorandum at "Affiliation and Collapsing."

<sup>5</sup> See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended*, 70 FR 24533 (May 10, 2005).

<sup>6</sup> See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination in the Antidumping Duty Investigation of Biodiesel from Argentina," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

#### Scope of the Investigation

The product covered by this investigation is biodiesel from Argentina. Commerce did not receive any scope comments subsequent to the *Preliminary Determination* and, therefore, the scope has not been updated since the *Preliminary Determination*. See the scope in Appendix I to this notice.

#### Period of Investigation

The POI is January 1, 2016, through December 31, 2016.

#### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we conducted the cost and sales verifications in Buenos Aires, Argentina, and Kansas City, Missouri, between October 30, 2017, and November 17, 2017. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by the respondents.

#### Final Affirmative Determination of Critical Circumstances, in Part

In the *Preliminary Determination*, in accordance with section 733(e)(1) of the Act and 19 CFR 351.206, Commerce found that critical circumstances existed for LDC and “all other” producers or exporters not individually examined and found that critical circumstances did not exist for the Vicentin Group. Commerce received no comments concerning the preliminary critical circumstances determination. Thus, for this final determination, Commerce continues to find that, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206, critical circumstances exist for LDC and “all other” producers or exporters and do not exist for the

Vicentin Group. For further discussion of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix II.

#### Use of Facts Available and Adverse Facts Available

For purposes of this final determination, Commerce relied, in part, on facts available with adverse inferences when calculating the margins for LDC and the Vicentin Group, pursuant to sections 776(a)(2)(A)-(C) and 776(b) of the Act. For further information, *see* the Issues and Decision Memorandum.

#### Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

#### All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "all-others" rate for exporters and producers not individually investigated shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero or *de minimis* or any margins determined entirely under section 776 of the Act. We calculated the all-others rate using a weighted average of the dumping margins calculated for the mandatory respondents using each

company's publicly-ranged values for the merchandise under consideration, pursuant to section 735(c)(5)(A) of the Act, as referenced in the “Final Determination Margins” section below.<sup>7</sup>

#### Final Determination Margins

The weighted-average dumping margins are as follows:

<b>Exporter or Producer</b>	<b>Estimated Weighted-Average Dumping Margin (percent)</b>	<b>Cash Deposit Rate (Adjusted for Subsidy Offset(s)) (percent)</b>
LDC Argentina S.A.	60.44	60.44
Vicentin S.A.I.C. <sup>8</sup>	86.41	86.23 <sup>9</sup>
All-Others	74.73	74.63 <sup>10</sup>

#### Disclosure

We will disclose the calculations performed within five days of any public announcement of this notice in accordance with 19 CFR 351.224(b).

#### Continuation of Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, for this final determination, Commerce will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of biodiesel, as described in the Appendix I to this notice, produced or exported by LDC and “all other” exporters and producers not individually examined, which were entered, or withdrawn from warehouse, for consumption on or after August 2, 2017 (90 days prior to the date of

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<sup>7</sup> For more detail on this calculation, *see* Memorandum, “Antidumping Duty Investigation of Biodiesel from Argentina: Final Determination Calculation for the ‘All Others’ Rate,” dated concurrently with this notice (Final All-Others Memorandum).

<sup>8</sup> As noted above, Commerce preliminarily determined that Vicentin S.A.I.C., and companies Renova S.A., Oleaginosa Moreno Hermanos S.A., Molinos Agro S.A., Patagonia Energia S.A., VFG Inversiones y Actividades Especiales S.A., Vicentin S.A.I.C. Sucursal Uy, Trading Company X, and Molinos Overseas Commodities S.A. are a single entity. *See* Preliminary Decision Memorandum at “Affiliation and Collapsing.” This determination has not been changed for the purposes of the final determination.

<sup>9</sup> *See* Memorandum to the File, “Antidumping Duty Investigation of Biodiesel from Argentina: Vicentin Group Final Determination Analysis,” dated concurrently with this notice (Vicentin Final Analysis Memorandum).

<sup>10</sup> *See* Final All-Others Memorandum.

publication of the *Preliminary Determination*), because we continue to find that critical circumstances exist with regard to imports from produced or exported by LDC and “all other” exporters and producers not individually examined.

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. CBP to continue to suspend liquidation of all appropriate entries of biodiesel from Argentina, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after October 31, 2017, the date of publication of the *Preliminary Determination*.

Furthermore, pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-

average dumping margin by the appropriate CVD rate.<sup>11</sup> Any such adjusted cash deposit rate may be found in the “Final Determination Margins” section, above.

These instructions will stay in effect until further notice.

#### International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2)(B) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of biodiesel from Argentina no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

#### Notification Regarding Administrative Protective Orders

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction or APO materials or conversion to judicial protective order is hereby

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<sup>11</sup> See Memorandum to the File, “Antidumping Duty Investigation of Biodiesel from Argentina: LDC Argentina S.A. Final Determination Analysis,” dated concurrently with this notice; *see also* Vicentin Final Analysis Memorandum; Final All-Others Memorandum.

requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: February 20, 2018.

**Prentiss Lee Smith,**

*Deputy Assistant Secretary for Policy and Negotiations.*



## **Appendix I**

### **Scope of the Investigation**

The product covered by this investigation is biodiesel, which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, including biologically-based waste oils or greases, and other biologically-based oil or fat sources. The investigation covers biodiesel in pure form (B100) as well as fuel mixtures containing at least 99 percent biodiesel by volume (B99). For fuel mixtures containing less than 99 percent biodiesel by volume, only the biodiesel component of the mixture is covered by the scope of the investigation.

Biodiesel is generally produced to American Society for Testing and Materials International (ASTM) D6751 specifications, but it can also be made to other specifications. Biodiesel commonly has one of the following Chemical Abstracts Service (CAS) numbers, generally depending upon the feedstock used: 67784-80-9 (soybean oil methyl esters); 91051-34-2 (palm oil methyl esters); 91051-32-0 (palm kernel oil methyl esters); 73891-99-3 (rapeseed oil methyl esters); 61788-61-2 (tallow methyl esters); 68990-52-3 (vegetable oil methyl esters); 129828-16-6 (canola oil methyl esters); 67762-26-9 (unsaturated alkylcarboxylic acid methyl ester); or 68937-84-8 (fatty acids, C12-C18, methyl ester).

The B100 product subject to the investigation is currently classifiable under subheading 3826.00.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), while the B99 product is currently classifiable under HTSUS subheading 3826.00.3000. Although the HTSUS subheadings, ASTM specifications, and CAS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

## **Appendix II**

### **List of Topics Discussed in the Issues and Decision Memorandum**

- I. SUMMARY
- II. BACKGROUND
- III. SCOPE OF THE INVESTIGATION
- IV. FINAL AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART
- V. CHANGES SINCE THE PRELIMINARY DETERMINATION
- VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES
- VII. DISCUSSION OF THE ISSUES
  - Comment 1: Whether it is Appropriate to Adjust Normal Value for the Renewable Identification Number Value
  - Comment 2: Whether the Determination to Disregard Home Market Prices Due to Particular Market Situation Contradicts Commerce Precedent
  - Comment 3: Whether the Particular Market Situation Permits Disregarding Raw Material Costs
  - Comment 4: Whether the Particular Market Situation Adjustment for Soybean Export Tax Results in Double Counting
  - Comment 5: Whether to Adjust the Constructed Value Profit Calculation
  - Comment 6: Whether Commerce's Use of its Inflation Methodology Should be Determined on a Country-Wide or Company-Specific Basis
  - Comment 7: Whether it is Appropriate to Index Costs for Inflation if Commerce Finds a Particular Market Situation
  - Comment 8: Whether to Deduct Export Taxes from Gross Unit Prices
  - Comment 9: Whether to Apply Adverse Facts Available to Certain Unreported LDC Expenses
  - Comment 10: Whether to Apply Facts Available to LDC's Unreported U.S. Sales
  - Comment 11: Treatment of Vicentin Group's EPA-Related Soybean Expenses
  - Comment 12: Whether to Apply Adverse Facts Available to Molinos's Export Expenses
  - Comment 13: Whether to Adjust Patagonia's Costs for the Change in Biodiesel Finished Goods Inventories
  - Comment 14: Whether to Reduce Patagonia's Byproduct Offset by Commissions Paid on the Sales of the Byproduct
  - Comment 15: Whether to Adjust Vicentin's Reported Costs for an Unreconcilable Cost Difference
  - Comment 16: Whether Elements of the Renova Transfer Price to Actual Processing Cost Comparison are on an Inconsistent Basis and Require Adjustment

### VIII. RECOMMENDATION

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